



An
Bord
Pleanála

Inspector's Report ABP-302455-18

Development	Partial demolition of 1-3 storey building & construction of 3 no. buildings containing 1 no. retail unit and 7 no. residential units.
Location	McCloskeys, 83-85, Morehampton Road, Dublin 4, D04K589
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3255/18
Applicant(s)	Lispopple Point Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First & Third Party
Appellant(s)	Lispopple Point Ltd, Frances Kavanagh, Julie Gibb, Michael Courtney
Observer(s)	Suzanna & Phil Doyle
Date of Site Inspection	3 rd December 2018.
Inspector	Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is located at 83/85 Morehampton Road, Donnybrook, Dublin 4, on the western side of the road, in a terrace comprising commercial units, where it occupies a mid-terrace position. The site has narrow frontage to Morehampton Road where it comprises a three storey, over basement public house, known as McCloskeys. The buildings to the south are similarly three storeys and those to the north two storeys.
- 1.2. The site extends to the rear in a rectangular shape and is shown as accessing Marlborough Road to the north, from a point approximately half way back the site. The site is occupied by a three storey brick building with a shared chimney at the eastern end, and a large shared chimney, which appears as an external feature on the eastern end, above the hipped gable of No 81 Morehampton Road. The building has a large rear extension, mainly over two floors, covering an area in excess of $\frac{3}{5}$ of the site, in use as a large public house. To the rear of the building there is a garden and terrace area, enclosed by buildings and walls.
- 1.3. Bounding the site to the south there is the blank gable of a commercial building which is accessed from the laneway to the south of No 105 Morehampton Road, a building known as Marketing Network House. To the east is the flank of the premises, which is part of the commercial terrace previously mentioned, known as Donnybrook Fair. To the west is the rear of a single storey vacant commercial premises accessed from Marlborough Road.
- 1.4. A laneway with a pair of wrought iron gates, accessed the appeal site via an archway under part of No.4 Marlborough Road. An access to the site is proposed via this laneway.
- 1.5. There is an access gateway within the archway, to the adjoining premises to the north and beyond the archway are access doors and windows to the AIB building, a gateway to another property, and a side door to No.4 Marlborough Road. At the end of the side boundary to No 4 Marlborough Road, the access widens into a small yard which various buildings adjoin, including a small building within which there is an access to the subject site and a single storey commercial premises, currently disused, to which the laneway appears to be the only means of access.

2.0 Proposed Development

2.1. Planning permission is being sought to partially demolish the existing building and develop 7 apartments and a retail unit as follows:

a) Demolition of 1-3 storey mid terrace building whilst retaining the existing 98sqm basement, and 3 storey front façade, gable & chimneys

b) Construction of 3 buildings:

Block A – 3 storey over basement, 118sqm retail unit and 2 no. 1 bed+study duplexes.

Block B – 4 storey, residential meeting room and storage at ground floor and 1 no. 2 bed apartment at 1st floor. 1 no. 2 bed duplex and 1 no. 1 bed + study duplex to 2nd & 3rd floors. All with balconies.

Block C – is 2 storeys with 2 no. 1 bed + study duplexes with balconies.

c) Provision of a new pedestrian entrance to replace the existing access from the laneway to the northwest of the site leading to Marlborough road.

d) 2 no. raised courtyards between the blocks, accessed by external stairs.

e) 14 no. bicycle spaces partially contained within a single storey bike shelter.

3.0 Planning Authority Decision

3.1. Decision

- Grant with standard conditions, the following is contested:
13 (d) Sufficient space must be provided to accommodate the collection of dry recyclable and organic kitchen waste/ garden waste. Provision should also be made for the collection of glass (separated by colour) in Bottle Banks within the curtilage of the Development. The Total footprint of each of these banks is 4 metres by 2 metres wide. The location must be external, with the sufficient access and clearance for servicing using a crane.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planners report is consistent with the planning authority decision.

3.2.2. Other Technical Reports

- Drainage Division – No objections subject to conditions
- Roads & Traffic Planning Division – no objections subject to conditions

3.3. Prescribed Bodies

None

3.4. Third Party Observations

- A number of submissions were received the issues raised are as set out in the grounds of appeal.

4.0 Planning History

3255/18 Permission was **granted** for partial demolition of 1-3 storey building & construction of 3 no. buildings containing 1 no. retail unit and 7 no. residential units.

30906/17 Permission was **refused** for the part demolition of the existing building and development of 1 over basement retail unit and 9 residential units.

PL29S.300946 (PA Reg Ref 30906/17) **outstanding**.

5.0 Policy Context

5.1. Development Plan

The Dublin City Development Plan 2016-2022

The site is zoned Z4 'to provide for and improve mixed-services facilities'. Residential and shop are permissible uses.

- Section 14.7 Transitional Zone Areas
- Section 16.10 Standards for Residential Accommodation

- Section 16.39 Cycle Parking.
- Table 16.2 – Cycle Parking Standards for Various Land-Uses.
- QH21 – Provision of adequate residential amenity
- CC4 – Daylight and natural ventilation

**Sustainable Urban Housing: Design Standards for New Apartments
Guidelines for Planning Authorities, Department of Housing, Planning and
Local Government March 2018**

- SPPR 2 – Dwelling mix.
- SPPR 5 – Ground floor ceiling heights
- Section 4.11 - adequate levels of sunlight to reach communal amenity space throughout the year.
- Section 4.15 Bicycle Parking and Storage.
- Section 4.18 – Carparking.
- Section 6.5 – Apartments and daylight provision.

Project Ireland National Planning Framework 2040

Section 1.2 Making the vision a reality

Section 4.5 Achieving urban infill / brownfield development

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal – First Party

First Party Grounds of appeal relate to condition 13 (d) as follows:

- Condition 13 (d) is stated to be unreasonable, this condition requires the applicant to provide individual glass colour bottle banks of 4x2 metres in an area accessible by crane.

- Given the layout of the existing buildings and proposed development it is not possible to access the rear of the site by crane.
- The development is for 7 units catering for a maximum of 17 people, it is stated that this number of residents will not generate the quantities of glass recyclables to warrant the provision of bottle banks of the size specified.
- Dedicated wheelie bins would be more appropriate in this case.

6.2. **Grounds of appeal - Third Party**

The third party grounds of appeal are submitted by a number of residents located to the north west of the site along Marlborough Road, the issues raised can be summarised as follows:

- The development would result in overshadowing and overlooking to properties along Marlborough Road.
- The proposed building is not accessible by all i.e. elderly, disabled and parents with push chairs.
- The applicant has no right of way over the laneway to the rear of no. 4 Marlborough Road.
- Intensified use of the laneway from Marlborough Road would impact negatively on the amenities of no.2 & 4 Marlborough Road in terms of noise disturbance and security.
- The proposal by virtue of its mass, height and scale would be injurious to amenity of surrounding properties and would be out of character with the modest two storey dwellings at Marlborough Road.
- Lack of amenity for future residents.
- Refuse should be collected at Morehampton Road and not Marlborough Road.
- Proposed refuse area may attract vermin and potentially be a fire hazard.
- Proposal would depreciate value of property in the area.
- Overdevelopment of site.
- Materially contravene zoning objective.

6.3. Applicant Response

- A shadow analysis was submitted to the planning authority, demonstrating limited overshadowing at certain times of the day.
- Fire strategy was submitted with application.
- Declaration has been submitted outlining the details of the right of way.
- Lane is currently used for refuse collections and deliveries from existing pub.
- Future residents will only use lane in an emergency.
- Frequency of lane use will reduce with the new development.
- All construction activity will take place from Morehampton Road and will not use the existing laneway.
- Residential amenity has been designed to accord with Government Guidelines.
- Bin store will be maintained by management company so as not to cause a health risk.

6.4. Planning Authority Response

- None

6.5. Observations

Observations are submitted from a number of residents located to the north west of the site along Marlborough Road and are summarised as follows:

- Overdevelopment of site
- No right of way exists from Marlborough Road to the appeal site
- Use of laneway to Marlborough road would materially impact on amenity, privacy and security of no. 4 Marlborough Road and nearby residences
- Laneway is too narrow to be used by vehicles thus not suitable for construction traffic.

6.6. Further Responses

Third Party responses:

- Validity of shadow analysis questioned.
- Increase in overshadowing shown.
- Roof of existing derelict shed is a fire hazard as it is constructed of tar and felt.
- Applicant has not demonstrated a right of way as documents do not relate to appeal address.
- Separation distances are substandard and do not provide for adequate privacy.
- Communal space is insufficient.
- Lack of alternative means of escape.

7.0 Assessment

7.1. The site contains an existing commercial property and is located entirely within an area subject to the Z4 zoning objective which seeks to provide for and improve mixed-services facilities. The provision of retail and residential uses at this location is accepted.

7.2. It is important to highlight at the outset that there is a current appeal under consideration relating to the refusal of planning (Ref PL29S.300946) for a mixed-use retail and residential development on this site. The current development has been reduced from 9 residential units to 7 and the revised design has reduced Block C from 3 floors to 2. Further amendments include:

- Omission of lift shaft
- Enclosure of stairwells
- Raising floor level of communal terrace areas by 3.4 metres.
- Provision of glass recycling bin within refuse storage area
- Enclosure of balconies and provision of 1.8 metre privacy screens
- Reduction in bedroom floor area

7.3. I consider that the relevant issues in determining the current appeal before the Board relates to:

- Overshadowing & Access to daylight
- Overlooking
- Adequacy of Amenity space
- Separation Distances
- Access & use of Marlborough Road laneway
- Other Matters
- Appropriate Assessment
- First Party Appeal

Overshadowing & Access to daylight

7.4. The grounds of appeal express concerns relating to overshadowing of properties along Marlborough Road. An overshadowing analysis accompanies the application as part of the design statement for the development. This analysis demonstrates that the proposed development will have a marginal increase in overshadowing to the properties along Marlborough Road with no.10 being the most affected by the loss of morning sun. No. 12 is shown to experience some additional loss of morning sun but retains a limited level of sunlight at this time to the rear windows. The neighbouring site at no. 79 Morehampton Road contains a vacant building to the rear, the use of which is unclear. The overshadowing analysis demonstrates that this building will be significantly overshadowed during morning hours, however, overshadowing will only impact the roof area of the building. It is of note that the reduction in height of Block C by 1.3 metres from that proposed under Ref PL29S.300946 does not lessen overshadowing to this property.

7.5. It is of importance to note that infill development at locations such as the appeal site supports the notion of compact growth which is significantly supported by the policies of the National Planning Framework in which it is an objective to deliver at least 40% of all new housing within the existing built up areas of cities. In order to deliver on the principles of compact growth a degree of flexibility must be provided for in relation to issues such as overshadowing.

7.6. Thus, having regard to the overshadowing analysis which demonstrates that a limited number of properties will be affected for a limited period of the day it is considered that the level of overshadowing generated by the development would not be so significant as to warrant a refusal. Furthermore given the suburban location of this site it is not considered that the level of overshadowing demonstrated would greatly compromise the future development of the adjoining site to the north.

Overlooking

7.7. The proposed development has been significantly altered from that proposed under the previous application (30906/7) in that the proposed balconies and stairwells have been enclosed within the fabric of the building. Where balconies remain visible such as unit no. 1, 2, 4 & 6, 1.8 metre boundary privacy screens are proposed in order to prevent any overlooking to neighbouring dwellings. The proposed stairwells, where visible, will be bounded by a translucent screen in order to reduce potential overlooking to adjacent properties. Overall the proposed development is considered to adequately address any issues relating to overlooking and I consider the overall design and layout to be acceptable in this regard.

Adequacy of Amenity Space

7.8. Appendix I of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 requires the following standards to be provided in terms of private amenity space:

Studio	4sqm
One bedroom	5 sqm
Two bedroom (3 persons)	6 sqm
Two bedroom (4 person)	7 sqm
Three bedroom	9 sqm

7.9. The balcony areas of the proposed development are largely in compliance with these standards and are considered to be adequate in terms of area.

7.10. In accordance with Appendix I of these guidelines 38sqm of communal amenity space is required, 87 sqm has been provided.

7.10.1. Notwithstanding that the requisite area of amenity space has been provided for, Section 3.35 of the apartment guidelines outlines that private amenity space should

be located to optimise solar orientation and minimise overshadowing. The Dublin City Development Plan 2016-2022 under policy CC4 encourages building layout and design which maximises daylight and requires residential development to be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011). This document gives minimum values for the average daylight factor (ADF) required in dwellings. The percentage required for a kitchen is 2%, for a living room 1.5%, and for bedrooms 1%.

- 7.11. Having regard to the overshadowing analysis submitted with the application it is clear that the balconies within Block C are overshadowed for a significant part of the day with limited daylight available during the middle of the day. This level of overshadowing is excessive and unacceptable. I have particular concerns in relation to the availability of daylight to unit 6 within this block. The living and kitchen area within this unit face directly onto the blank wall of Marketing Network House which is c. 1.5 metres from the balcony area and c. 2.8 metres from the living area window. The proximity of the adjacent building will significantly reduce access to daylight for this unit and has resulted in an average daylight factor of c. 1% which is below the minimum 2% required by Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011).
- 7.12. It is noted that the ground level of the proposed courtyard areas has been raised by c. 3.4 metres from that previously proposed under Ref PL29S.300946, in order to provide for a less shaded space. The separation distance between Block A and B is c. 11.5m and Block B and C is c.9.5m. Having regard to the closeness of the proposed buildings and the details of the overshadowing analysis it is questionable if the extent of communal open space can reasonably be regarded as being suitable for year-long communal use having regard to the extent of shading of the area. BRE states that at least half of a garden or amenity area should receive at least two hours of sunlight on 21st March. The method of selecting the extent of communal open space has been to outline an area of outdoor space between Blocks B and C notwithstanding its use for access to the apartments. It would not be unreasonable to look at this outdoor space in relation to the extent of the area in receipt of at least two hours of sunlight on 21 March, and to nominate an area double that extent as usable communal open space. If the overshadowing analysis appendix C (10am),

(12 noon) and (3pm), are compared in order to establish what extent of the area is unshaded during the day, it can be seen that only part of the courtyard extending from about the middle of the site to the western boundary, will receive two hours of sunlight on 21 March. Therefore even within courtyard 2 usable communal open space, based on the criterion of sunlight availability, is extremely limited in extent and only a fraction of the area nominated. I consider that these communal spaces would also be overshadowed for a significant part of the day.

- 7.12.1. In conclusion therefore, notwithstanding that an adequate quantum of amenity space has been provided for, the quality is substandard. I note the location of Herbert Park proximate to the appeal site, however given the daylight restrictions on site to both private and communal open space I consider the proposal to be an overdevelopment of this inner suburban site. The proposal would compromise the residential amenity of future residents and would be contrary to the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 and policy CC4 of the Dublin City Development Plan 2016-2022 and will be recommended for refusal on this basis.

Separation Distances

- 7.13. As mentioned above the separation distances between the three blocks is limited. Balconies in Block B are c. 7 metres from the façade of Block C and Balconies in Block A are c. 12 metres from the façade of Block B. Whilst the development would not be required to provide for a full 22 metre separation distance from window to window, the limited separation proposed would not provide the units with adequate privacy and I consider that a greater distance would result in a more acceptable form of development within this restricted site. If the Board is of a mind to grant permission, it may wish to consider a condition to remove one of the blocks and reposition the remaining block in order to achieve a greater separation distance and optimise daylight within the scheme.

Access & use of Marlborough Road laneway

- 7.14. The proposed development will be accessed via Morehampton Road. A pedestrian access gate will be provided at street level within a connecting laneway at ground level facilitating access via stairs to each block. The proposed cycle storage, refuse storage and residents meeting room will be accessed via this laneway. A new metal

gate is proposed within the north western boundary of the site in order to facilitate refuse collections from Marlborough Street via a laneway to the rear of no's 2 & 4 Marlborough Street. Concerns have been raised within the grounds of appeal regarding the intensification of use of this laneway and the potential impacts on properties along Marlborough street, in particular no.'s 2 & 4. It is not proposed to utilise the laneway as a means of daily access by residents. It is stated that this laneway is currently utilised for transfer of refuse to Marlborough Street for collection, it is proposed to maintain access to this lane for this use and as a means of escape in the event of an emergency. Concerns relating to rights of way are a civil matter and not for adjudication by the Board. The access arrangements as outlined above are considered acceptable.

Other Matters

- 7.15. Although the 2018 apartment guidelines see some minimum space requirements being reduced, minimum cycle parking requirements have been increased. The Dublin City Development Plan 2016-2022 requires a minimum of 1 cycle space per residential unit. The 2018 Sustainable Urban Housing: Design Standards for New Apartments Guidelines requires a minimum of 1 cycle space per bedroom and visitor cycle parking at a standard of 1 space per 2 residential units. The development plan requirement for the retail area is 1 space per 200 sq metres. Based on the current standards 12 cycle parking spaces are required, 14 are proposed.
- 7.16. The legal issue raised concerns the laneway and a small building adjoining the laneway, through which the site would access Marlborough Road .
- 7.17. The use of the laneway to access the site is contested. The ownership of the area where the gateway and bicycle parking is proposed, and where currently there is a shed associated with the public house, is also contested.
- 7.18. This is largely a legal matter and is not one that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development, covers the eventuality that the development cannot be implemented for legal reasons.

Appropriate Assessment

- 7.19. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate

Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

First Party Appeal

- 7.20. The applicant has raised concerns with regard to the deliverability of condition 13 (d). It is the applicants' contention that the proposed development will not generate a quantum of glass which would require glass bins of such a size as required by this condition (2x4m). It is also stated that due to the layout of the existing development it is not feasible to utilise a crane for such a purpose. The applicant has proposed the provision of separate glass wheelie bins within the proposed refuse area. Given the proposed residential and retail use of the development I consider this proposal to be adequate to cater for the development.

8.0 Recommendation

- 8.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations

9.0 Reasons and Considerations

1. The proposed development, by providing residential accommodation where some apartments would have insufficient daylight, sunlight and/or a very poor outlook and where communal open space would be of insufficient quality due to the failure to ensure that adequate levels of sunlight reach the space throughout the year, would be contrary to the policies and objectives of the Dublin City Development Plan and the Sustainable Urban Housing: Design Standards for New Apartments Guidelines, 2018, which seek to promote the provision of quality apartments and to ensure that apartment living is an increasingly attractive and desirable housing option. The proposed development would therefore fail to provide an adequate standard of residential amenity for future residents and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development, by reason of the limited separation distances between the proposed apartment blocks would not provide for

adequate levels of privacy for future residents and would give rise to an unacceptable level of overlooking between apartments. The development would therefore constitute an overdevelopment of the site and seriously injure the residential amenities of future residents. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Sarah Lynch
Planning Inspector

9th January 2018